

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY
REHABILITATION REVIEW PANEL

In the Matter of the QRC Firm
Registration Renewal Application of
Sevdy and Lockett, Inc.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED DECISION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on Thursday, August 1, 1996, at the Office of Administrative Hearings, 100 Washington Square Building, in the City of Minneapolis, Minnesota. The record closed on the date of the hearing.

Rory H. Foley, Assistant Attorney General, Suite 200, 520 Lafayette Road North, St. Paul, Minnesota 55155-4199, appeared on behalf of the staff of the Department of Labor and Industry. James A. Sevdy, 302 E. Lafayette Road, St. Paul, Minnesota 55107, appeared on behalf of the Registrant, Sevdy and Lockett, Inc.

NOTICE

This Report is a recommendation, not a final decision. The Rehabilitation Review Panel will make the final decision after a review of the record. The Rehabilitation Review Panel may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Panel shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Rehabilitation Review Panel. Parties should contact Joseph Sweere, Chair, Rehabilitation Review Panel, 443 Lafayette Road, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not the denial of the Registrant's Application for Renewal of Registration as an organization approved for the employment of Qualified Rehabilitation Consultants ("QRC") should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Sevdy and Lockett, Inc. ("the Respondent" or "the Registrant") is a Qualified Rehabilitation Consultant firm registered with the Department of Labor and Industry. A QRC performs rehabilitation services for injured workers under Minnesota Workers' Compensation law.

2. On December 1, 1995, the Respondent filed an "R-24" Application for Renewal of Registration as an organization approved for the employment of Qualified Rehabilitation Consultants. The application listed the name of the QRC firm as "Sevdy and Lockett, Inc.". The application listed Wausau Insurance Company as the firm's workers' compensation carrier and listed a policy number. However, the application also indicated that the firm was not required to have workers' compensation liability coverage because it had no employees. The application was signed by James A. Sevdy, whose signature was notarized. Ex. 1.

3. The application was reviewed by Jeanne Gehrman, the department employee responsible for review of QRC applications. Because she remembered talking to a secretary at the firm, she asked a department investigator to determine whether or not the firm had employees. The investigation determined that the firm had four employees. Ex. 3. It was also determined that the firm's workers' compensation insurance with Wausau Insurance Company was canceled as of November 22, 1995. Ex. 1.

4. As a result of the investigation, the Department issued an Order to the firm requiring it to obtain workers' compensation insurance coverage and assessing a penalty. Ex. 3. This Order was held in abeyance pending the Respondent's resolution of its insurance coverage dispute.

5. On April 30, 1996, Ms. Gehrman issued an Order denying the Respondent's Application for Renewal because it did not have workers' compensation insurance as required by law and because the application stated that the firm had no employees when, in fact, it did. Ex. 2.

6. The Respondent was insured with Wausau Insurance Company for workers' compensation insurance for the policy period from April 25, 1994 through April 25, 1995, for a premium of \$1,224.50. Mr. Sevdy applied and paid a premium for coverage for the next year through April 25, 1996. Ex. G, p. 5. However, in August of 1995, Wausau Insurance Company advised Mr. Sevdy that as a result of an audit for the 1994-95 policy period, he owed an additional premium of \$928. Ex. G, p. 6. Mr. Sevdy wrote to Wausau Insurance and to the Assigned Risk Plan in August and September of 1995, advising them that he did not owe this additional premium and threatening the company with a claim if they attempted to collect it. Ex. G, pp. 8-9. Wausau advised Mr. Sevdy that his workers' compensation coverage would be canceled if he did not pay the additional premium. Mr. Sevdy elected not to pay the premium and his insurance was canceled on November 22, 1995.

7. In January of 1996, the Department inquired of Mr. Sevdý whether or not he had obtained workers' compensation insurance. Mr. Sevdý wrote to the Department in a letter dated January 25, 1996, and advised the Department that he did not intend to pay any additional money to Wausau Insurance until the dispute between them was settled. He expressed his willingness to attend a mediation session with Wausau to resolve the dispute over their audit of the Respondent's 1994-95 coverage period. Ex. E.

8. On May 9, 1996, Mr. Sevdý wrote to the Minnesota Workers' Compensation Assigned Risk Pool requesting assistance in resolving his dispute with Wausau Insurance Company. He asked their assistance in determining that his workers' compensation insurance was wrongfully canceled in November of 1995, in restoring coverage for a single clerical employee, and in obtaining a refund of \$888 which Mr. Sevdý believed Wausau owed to his firm. Ex. F.

9. On May 29, 1996, Mr. Sevdý filed a request for a formal hearing on the denial of his QRC registration renewal. Ex. 4. In an Addendum to the request, he stated that he intended to rely upon the Minnesota Workers' Compensation Assigned Risk Pool to help him get the workers' compensation insurance matter resolved.

10. On May 23, 1996, the Minnesota Workers' Assigned Risk Plan wrote to Mr. Sevdý and indicated that they were in the process of reviewing the matter. Ex. 4.

11. In a letter dated July 25, 1996, Mr. Sevdý provided further information to Wausau Insurance Company concerning the 1994-95 policy year period. In a letter to Wausau dated July 29, 1996, he advised Wausau Insurance that he was electing not to be covered personally by the workers' compensation policy since he is an owner of the firm.

12. In a Memorandum dated July 30, 1996, Wausau Insurance Company advised Mr. Sevdý that he no longer owed the \$928 and that, in fact, an audit revision as of July 29, 1996, provided him a credit of \$1,102 resulting in a credit of \$174. With other adjustments, Mr. Sevdý received a total credit of \$910. Ex. G, p. 4.

13. On July 30, 1996, Mr. Sevdý sent a check in the amount of \$120 to the Minnesota Workers' Compensation Assigned Risk Pool to pay for workers' compensation insurance commencing on or about that date. Ex. C.

14. Mr. Sevdý operates Sevdý and Lockett, Inc. in two divisions, namely Disability Management Services and Vocational Rehabilitation Consultants. He advised Ms. Gehrman of this arrangement in a letter dated November 30, 1993, in connection with a prior application. He asked her at that time to contact him if she wanted him to take additional steps to separate the two divisions. Ex. 4. At that time, Mr. Gehrman agreed that the Disability Management Service employees should not be listed as employees of the QRC firm.

15. At the present time, Mr. Sevdý is the only QRC in his firm. Most of the revenue generated by Sevdý and Lockett, Inc. is from the Disability Management Service business. At the present time, Mr. Sevdý has approximately five semi-active rehabilitation files that generate well under \$1,000 a month in revenues. Ex. A. The firm employs one secretary at the present time and has during 1995-96. Most, but not

all, of her duties relate to the disability management business. The Respondent had no workers' compensation insurance for the secretary from November 22, 1995 through July 30, 1996.

16. Sevdý & Lockett, Inc. has only one Employer Identification Number for IRS purposes. The firm maintains only one checking account. Mr. Sevdý has never filed an application asking that the two divisions in his business be separated for purposes of workers' compensation insurance risks.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Rehabilitation Review Panel have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 176.102, subd. 3, 3a and 3b.

2. The Department of Labor and Industry has complied with all substantive and procedural requirements of law or rule and the Notice of Hearing in this matter was proper.

3. Under Minn. Stat. § 176.102, subd. 3a, the Rehabilitation Review Panel has authority to discipline Qualified Rehabilitation Consultants and may impose a penalty of up to \$1,000 per violation and may suspend or revoke certification.

4. Under Minn. Rule pt. 5230.1500, subp. 2, an appeal from the denial of a renewal of registration proceeds under Minn. Stat. § 176.102, subd. 3.

5. Under Minn. Rule pt. 5220.1500, subp. 3, the failure to meet the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801, or the violation of any provisions of Minnesota Statutes, Ch. 176, pts. 5220.0100 to 5220.1900, or orders issued under the statutes of rules, constitute grounds for denial of registration renewal as a Qualified Rehabilitation Consultant.

6. Under Minn. Stat. § 176.181, subd. 2, every employer must insure payment of compensation with some insurance carrier authorized to insure workers' compensation liability in this state, or obtain an order permitting self-insurance.

7. For the period of November 22, 1995 through July 30, 1996, the Respondent failed to maintain workers' compensation liability insurance for at least one employee in its firm.

8. By its violation of Minn. Stat. § 176.181, subd. 2, the Respondent has violated Minn. Rule pt. 5220.1500, subp. 3, and therefore is in violation of Minn. Stat. § 176.102, subd. 3a.

9. In its Application for Renewal for Registration filed December 1, 1995, the Respondent stated that it had workers' compensation insurance and also that it was not required to have coverage because it had no employees.

10. The Department has failed to prove by a preponderance of the evidence that the Respondent intentionally misrepresented either the number of employees it had or whether or not it had workers' compensation insurance.

11. The above Conclusions arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these Conclusions by reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Rehabilitation Review Panel take disciplinary action against the registration of Sevdý and Lockett, Inc.

Dated this 8th day of August 1996.

GEORGE A. BECK
Administrative Law Judge

Reported: Taped.
No transcript prepared.

NOTICE

Under to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Department of Labor and Industry staff argues that the Respondent's Application for Renewal of its QRC firm registration should be denied for two reasons. First, because it failed to obtain workers' compensation insurance on its employees for a period of time, and secondly, because the Respondent made misrepresentations on its Application for Renewal. A violation of Ch. 176 of Minnesota Statutes, including the requirement that every employer must have workers' compensation insurance for its employees, constitutes grounds for denial of renewal. Under Minn. Stat. § 176.102, subd. 3a, the Rehabilitation Review Panel also has authority to suspend or revoke a certification and to impose a civil penalty.

The Findings of Fact indicate that the Respondent failed to maintain workers' compensation liability insurance from November 22, 1995 through July 30, 1996. During this time period, the Respondent had at least one employee in its firm, namely a secretary. It was Mr. Sevdy's intention not to include himself on the policy since he is the owner of the company. Mr. Sevdy testified that at the time that the Department determined that he had four employees in early 1996, he had one and one-half employees. Whatever the exact number, Sevdy and Lockett, Inc. clearly had employees without workers' compensation insurance.

Mr. Sevdy advances two arguments in response to the allegation of lack of workers' compensation insurance. First, he argues that he operates his company as two separate divisions, namely the Disability Management Division and the Qualified Rehabilitation Consultant (QRC) Division. He argues that this proceeding should focus on the QRC Division, of which he is the only employee. Since there are no other employees in the division besides the owner, he argues that he is not required to have workers' compensation liability insurance for that portion of his business. He points out that he advised the Department in 1993 of his intent to operate these two businesses separately, and that the Department agreed that he did not need to list the Disability Management employees on his QRC application. The reason for this arrangement is that there is a statutory requirement that 80 percent of the employees of a QRC firm must be QRCs.

Secondly, Mr. Sevdy argues that he did all that he reasonably could to keep his insurance coverage. He argues that it was wrongfully canceled as evidenced by Wausau Insurance Company's withdrawing their claim for the additional premium in July of 1996. He suggests that since he was negotiating to get his policy restored he should not be found to be in violation.

The record indicates, however, that the Respondent has operated its firm as one company for purposes of workers' compensation insurance. Its policy covered all employees in the firm. It has only one employer identification number and one checking account for the entire company. It has never applied to separate the risk between its two "divisions" for workers' compensation purposes. The QRC application was in the name of the company, not one division. Although Mr. Sevdy argues that the Rehabilitation Division of the Department has jurisdiction only over QRCs, and therefore

should not be concerned with an insurance violation for disability managers, the Department correctly argues that it has authority to discipline a QRC firm for any violation of Ch. 176. The record indicates that Sevdý and Lockett, Inc., which is the QRC applicant for renewal, lacked workers' compensation liability insurance for at least one employee for a period of seven months. This failure to comply with the law was intentional. Mr. Sevdý admits that he became angry with people at Wausau Insurance Company and simply decided that he would not pay them the disputed premium and instead elected to try to settle the matter without paying the premium. Mr. Sevdý could have, of course, paid the premium and maintained his coverage while still sorting out his dispute with the insurance company. Mr. Sevdý is the QRC for the firm. His failure to comply with Ch. 176 is properly found to be a violation subject to discipline.

The Department staff also asserts that Mr. Sevdý made a misrepresentation in his Application for Renewal. He listed the name of Wausau Insurance as well as a policy number in his December 1, 1995 application, even though his insurance had been canceled at that point. He also indicated that he had no employees. Mr. Sevdý testified that he listed the policy because he was negotiating to retain his coverage. He also testified that he indicated no employees because there were none in the QRC Division and he believed that, as per his 1993 letter to the Department, only QRC employees should be recognized on the application. In its initial denial of renewal, the Department staff cited the misrepresentation as the statement that the Respondent had no employees. In its final argument, the Department suggested that the misrepresentation was the claim that the Respondent had a workers' compensation policy in effect.

Given Mr. Sevdý's explanation of his view of the operation of his business, as well as his 1993 letter to the Department, it cannot be concluded that he made an intentional misrepresentation in his Application for Renewal. He did believe that he had no employees in his QRC Division. He did list an expired policy, but explained that he hoped to have that policy reinstated. If Mr. Sevdý were intentionally seeking to deceive the Department, it seems odd that he placed both pieces of information on his application. Additionally, the record seems to indicate that the Department's determination of four employees may not have been accurate. There is no dispute that he had at least the one secretary employed by the company, although it appeared likely that more of her work was performed for the Disability Management function where most of the Respondent's revenue is derived. Given the factual background, it does not appear that an intentional misrepresentation was made.

The Rehabilitation Review Panel has a wide range of discipline available to it should it also determine that the Respondent violated Minnesota law by not carrying workers' compensation insurance. It is authorized by rule to deny renewal. It could permit renewal and suspend the registration for a period of time. It is authorized by statute to impose a civil penalty of \$1,000 per violation. The panel would also have implied authority to censure the registrant. The discipline imposed by the panel should recognize that he had a good faith dispute with the insurance company which was ultimately resolved in the Respondent's favor. Additionally, Mr. Sevdý was going through a difficult time since his partner had died during 1995, and he was recovering from this loss and reorganizing the business. It is also arguable that Mr. Sevdý

inaccurately believed that his failure to maintain workers' compensation liability insurance would not affect his QRC registration. In fact, the failure to insure is a matter within the jurisdiction of the panel, even if Sevdy and Lockett, Inc. is viewed as operating in two separate divisions. The failure to insure reflects directly upon the registrant, Sevdy and Lockett, Inc., as well as the principal QRC of the firm, Mr. Sevdy. For this reason, some discipline is appropriate.

G.A.B.